

## Exhibit 1 to Declaration

AeroGen, Inc.  
3110 Coronado Drive  
Santa Clara, CA 95054

Gentlemen:

The following contains all the terms of my consulting agreement (the "Agreement") with AeroGen, Inc., a corporation (the "Company").

The Company has offered to me, and I hereby accept the position Valve Development Consultant of the Company, effective as of the date hereof. The Company or I may terminate my retention as a consultant at any time, with or without cause, upon two-weeks written notice to the other party.

The amount of time I will spend as a consultant to the Company and the nature of the services provided and my compensation are set forth in Exhibit A hereto. In rendering such services to the Company, I shall act as an independent contractor and not as an employee of the Company. The Company or I may terminate the Agreement at any time, with or without cause.

I understand that the Company possesses and will continue to possess information that has been created, discovered or developed, or has otherwise become known to the Company, including information created, discovered, developed or made known by me (and within the scope of the Agreement) or to me during the period of or arising out of my retention as a consultant by the Company, and/or in which property rights have been assigned or otherwise conveyed to the Company, which information has commercial value in the business in which the Company is engaged. All of the aforementioned information is hereinafter called "Confidential Information." By way of illustration, but not limitation, Confidential Information includes all data, complications, specifications, strategies, projections, processes, techniques, formulae, models and patent disclosures; and all tangible and intangible embodiments thereof of any kind whatsoever including, where appropriate and without limitation, all compositions, machinery, apparatus, records, reports, drawings, patent applications and documents. Confidential information shall not include information which Consultant reasonably demonstrates to the Company's satisfaction (i) is now, or hereafter, through no act or failure to act on the part of Consultant, becomes generally known to persons who are not under an obligation to keep such information confidential, (ii) is acquired by Consultant from a person as a matter of right without violation of any duty of non-disclosure on the part of such person, or (iii) was known by consultant before the effective date of the Agreement as shown by Consultant's written records.

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For the purposes of this Agreement, the 'business in which the Company is engaged' means the development of the drug delivery systems for inhalation therapy.

In consideration of my retention as a consultant to the Company, and the compensation received by me from the Company from time to time, I hereby agree as follows:

1. All Confidential Information shall be the sole property of the Company and its assigns, and the Company and its assigns shall be the sole owner of all patent and other rights in connection therewith. I hereby assign to the Company any rights I may have or acquire in all Confidential Information. At all times during my retention as a consultant by the Company and for a period of three years after termination of such retention as a consultant, I will keep in confidence and trust all Confidential Information, and I will not use or disclose any Confidential Information or anything relating to it without the written consent of the Company, except as may be necessary in the ordinary course of performing my duties as a consultant of the Company.

2. I agree that during the period that I am retained as a consultant to the Company I will not, without the Company's express written consent, engage in any employment or activity (whether as a consultant, adviser or otherwise) in any business competitive with the Company.

3. All documents, data, records, apparatus, equipment and other physical property, whether or not pertaining to Confidential Information, furnished to me by the Company or produced by myself or others in connection with my retention as a consultant shall be and remain the sole property of the Company and shall be returned promptly to the Company as and when requested by the Company. Should the Company not so request, I shall return and deliver all such property upon termination of my retention as a consultant by me or by the Company for any reason and I will not take with me any such property or any reproduction of such property upon such termination.

4. I agree that for a period of one year following termination of my retention as a consultant of the Company, I will not solicit or in any manner encourage employees of the Company to leave its employ.

5. Subject to the description of the project and compensation, I will promptly disclose to the Company, or any persons designated by it, all improvements, inventions, formulae, processes, techniques, know-how and data, whether or not patentable, made or conceived or reduced to practice or learned by me, either alone or jointly with others, during the period of my retention as a consultant which are (a) within the scope of the services to be provided by me under the Agreement, or (b) result from tasks assigned me by the Company, or (c) funded by the Company, or (d) result from use of premises owned, leased or contracted for by the Company (all said improvements, inventions, formulae, processes, techniques, know-how and data shall be collectively hereinafter

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called "Inventions"). Such disclosure shall continue for one year after termination of the Agreement with respect to anything that would be an Invention if made, conceived, reduced to practice or learned during the term hereof.

6. I agree that all Inventions shall be the sole property of the Company and its assigns, and the Company and its assigns shall be the sole owner of all patents and other rights in connection therewith. I hereby assign to the Company any rights I may have or acquire in all Inventions. I further agree as to all Inventions to assist the Company in every proper way (but at the Company's expense) to obtain patents on the Inventions in any and all countries, and to that end I will execute all documents for use in applying for and obtaining such patents thereon and enforcing same, as the Company may desire, together with any assignments thereof to the Company or persons designated by it. My obligation to assist the Company in obtaining and enforcing patents for the Inventions in any and all countries shall continue beyond the termination of my retention as a consultant, but the Company shall compensate me at a reasonable rate commensurate with rates paid by others for comparable services after such termination for time actually spent by me at the Company's request on such assistance. In the event that the Company is unable for any reason whatsoever to secure my signature to any lawful and necessary document required to apply for or execute any patent application with respect to Inventions (including renewals, extensions, continuations, divisions or continuations in part thereof), I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact to act for and in my behalf and instead of me, to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of patents thereon with the same legal force and effect as if executed by me.

7. As a matter of record I have attached hereto as Exhibit B a complete list of all inventions or improvements relevant to the subject matter of my retention as a consultant by the Company which have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company which I desire to remove from the operation of the Agreement; and I covenant that such list is complete.

8. I represent that my performance of all the terms of the Agreement and that my retention as a consultant by the Company does not and will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my retention as a consultant by the Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith.

9. I understand as part of the consideration for the offer to retain me as a consultant extended to me by the Company and of my retention as a consultant by the Company, that I have not brought and will not bring with me to the Company or use in the performance of my responsibilities at the Company any equipment, supplies, facility or trade secret information of any current or former employer which are not generally available to the public, unless I have obtained written authorization for their possession and use.

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10. I also understand that, in my retention as a consultant of the Company, I am not to breach any obligation of confidentiality that I have to others, and I agree that I shall fulfill all such obligations during my retention as a consultant of the Company.

11. I agree that in addition to any other rights and remedies available to the Company for any breach by me of my obligations hereunder, the Company shall be entitled to enforcement of my obligations hereunder by court injunction.

12. If any provision of the Agreement shall be declared invalid, illegal or unenforceable, such provision shall be severed and all remaining provisions shall continue in full force and effect.

13. The Agreement shall be effective as of the date hereof.


14. The term Company, as used herein, shall include any subsidiary or affiliate of Fluid Propulsion Technologies Inc.

15. The Agreement shall be binding upon me, my heirs, executors, assigns and administrators and shall inure to the benefit of the Company, its successors and assigns.

16. The Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof.

17. The Agreement may be amended in a writing signed by both parties.

Dated: June 1, 1997

  
Miro S. Cater  
1777 Mitchell Ct.  
Daytona Beach, FL 32124

Accepted and agreed  
June 1, 1997

By   
Cheng H. Wu  
Engineering Manager  
AeroGen, Inc.  
3110 Coronado Drive  
Santa Clara, CA 95054

RECEIVED  
JAN 16 2002  
OFFICE OF PETITIONS

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